

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

5:07-CT-3153-FL

ROGER BLAKENEY, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	JOINT STATUS REPORT
)	
TODD ISHEE,)	
Secretary of the North)	
Carolina Department of Public Safety;)	
JAMEL JAMES, Warden of Central)	
Prison; and UNKNOWN EXECUTIONERS,)	
)	
Defendants.)	

In reply to the Court's order directing the parties to file a joint status report no later than September 15, 2024, describing what proceedings have taken place since the Court was last updated, the parties have conferred and jointly submit the following report.

As originally summarized in the parties' September 21, 2015, status report, the state court litigation involving the legality of Defendants' execution procedures, captioned *Robinson, et al. v. Hooks, et al.*, remains pending in Wake County Superior Court.

With regard to the Racial Justice Act (RJA), Plaintiffs have motions pending in state court. In 2013, the RJA was repealed, and that repeal purported to apply retroactively to capital defendants, such as Plaintiffs, who had properly filed RJA motions pending at the time of the repeal. *See* S.L. 2013-154, § 5. However, on June 5, 2020, the N.C. Supreme Court issued *State v. Ramseur*, 374 N.C. 658 (2020), holding that the 2013 repeal of the RJA could not constitutionally be applied to dismiss the RJA motions of death row inmates such as Plaintiffs who investigated and properly filed those motions prior to the repeal.

As a result of the *Ramseur* decision, death row prisoners in North Carolina who had filed motions under the RJA prior to the repeal are entitled to pursue those pending claims. These claims share unresolved questions of statutory interpretation that have not been addressed previously by the state supreme court. Further, because the RJA permits defendants to present evidence alleging patterns of race discrimination across the state as well as geographic regions including judicial divisions, prosecutorial districts, and counties, the pending RJA cases may also have factual questions in common.

At the present time, RJA litigation is concentrated in *State v. Hasson Bacote* in Johnston County, North Carolina. From February 26 to March 8, 2024, the Superior Court of Johnston County convened an evidentiary hearing on claims of discrimination in jury selection and jury sentencing. The presiding judge heard closing arguments on August 21, and the parties are awaiting a decision.

The parties anticipate that *Bacote* will serve as the next litigated RJA case in North Carolina. The parties do not expect that litigation of any other individual RJA cases will occur while *Bacote* is litigated, through the completion of any appellate review, in order to clarify common and broadly applicable issues in an orderly and efficient fashion.

The parties do not know when the state court lethal injection litigation or the litigation of Plaintiffs' RJA motions will conclude. The parties do not expect any execution dates to be set for Plaintiffs until after the resolution of RJA litigation and the conclusion of any pending litigation regarding lethal injection either in state court or in this case. Accordingly, subject to the Court's approval, the parties agree that it is appropriate for these proceedings to remain in abeyance.

Respectfully submitted this the 12th day of September 2024.

FOR DEFENDANTS ISHEE AND JAMES:

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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing Joint Status Report with the Clerk of Court using the CM/ECF system, which will send electronic notification of such filing to the counsel of record for the Defendants, the N.C. Department of Justice, Special Deputy Attorney General Joseph Finarelli, at jfinarelli@ncdoj.gov .

This the 12th day of September 2024.

/s/ Gretchen M. Engel

Gretchen M. Engel
Counsel for Plaintiffs